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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA

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8 HOMERUN PRODUCTS, LLC,

9 Plaintiff,

10 v.

11 TWIN TOWERS TRADING, INC.,

12 Defendant.
13

Case No.: 2:18-cv-00794-JCM-GWF

ORDER

Re: Motion to Compel (ECF No. 72)

14 This matter is before the Court on Plaintiff's Motion to Compel Discovery (ECF No. 72),
15 filed on January 31, 2019. Defendant filed its Opposition (ECF No. 78) on February 14, 2019,
16 and Plaintiff filed its Reply (ECF No. 83) on February 21, 2019. The Court conducted a hearing
17 in this matter on March 4, 2019.

18 **BACKGROUND**

19 Plaintiff HomeRun Products, LLC ("HomeRun") alleges that it is an importer and
20 distributor of products, as well as the manufacturer, importer and distributor of a kitchen utensil
21 known as the "Miracle Whisk." It sells the Miracle Whisk directly to consumers through
22 traveling sales teams. HomeRun contracts with supermarkets, retailers and tradeshow to set up
23 booths operated by its sales teams. The sales teams perform live demonstrations of the products
24 to shoppers, and HomeRun pays a percentage of the product sales to the stores that host its sales
25 teams. HomeRun claims that it developed a propriety method of marketing and demonstrating
26 its products that does not require use of the hosting stores' public address systems which is
27 disfavored by the stores. *Complaint* (ECF No.1), at ¶¶ 7-12.

1 Defendant Twin Towers Trading, Inc. (“Twin Towers”) also engages in the direct sales
2 of products at supermarkets and tradeshow. On December 10, 2014, HomeRun and Twin
3 Towers entered into a Vendor Services Agreement pursuant to which HomeRun appointed Twin
4 Towers as its exclusive vendor representative for the demonstration and sale of products within
5 the Vons and Kmart retail stores and others as mutually agreed. Under this agreement,
6 HomeRun was responsible for conducting the sales events and providing the product inventory
7 for sale at those events. Twin Towers was obligated to manage the relationship between Twin
8 Towers and the stores, research and schedule space availability, perform program and sales
9 analyses, provide HomeRun with reports concerning the sale of products, and be the supplier of
10 record for sales of products within the territory. *See Affidavit of Brian Wacker* (ECF No. 79),
11 *Exhibit E* (copy of December 10, 2014 Vendor Services Agreement).

12 HomeRun alleges that following a successful trial period under the Vendor Services
13 Agreement, the parties negotiated a second agreement, a final draft of which was prepared and
14 approved by both parties in or around May 2015. *Complaint* (ECF No. 1), at ¶ 16. (HomeRun
15 acknowledges that it never received a signed second agreement from Twin Towers.) Under the
16 second agreement, Twin Towers was made the exclusive vendor for the demonstration and sale
17 of HomeRun’s products, including the Miracle Whisk, within selected stores in Twin Tower’s
18 territories. HomeRun agreed to provide the Miracle Whisk product to Twin Towers at wholesale
19 cost from which HomeRun expected to receive a profit of \$1.10 per whisk. The actual per-unit
20 cost of the whisks depended on the number of units ordered, with “container pricing” creating
21 the lowest per-unit cost. HomeRun would also receive a percentage of sales made by Twin
22 Towers and Twin Towers agreed not to purchase similar products from other suppliers. *Id.* at ¶¶
23 17-25. HomeRun would also receive a three percent gross revenue share in perpetuity for any
24 training provided to Twin Towers on any products sold in any retailer worldwide, excluding
25 Sam’s Club and Costco. *Id.* at ¶ 26.

26 HomeRun sent two representatives to the United Kingdom to instruct Twin Towers’ sales
27 team in HomeRun’s proprietary sales techniques. While the representatives were in the United
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1 Kingdom, a dispute arose regarding the pricing of the Miracle Whisk. HomeRun had shipped
2 several hundred whisk products to the United Kingdom for demonstration purposes which were
3 quickly sold. Twin Towers requested more product from HomeRun, but objected to the price
4 that HomeRun charged. Twin Towers demanded container pricing which HomeRun was unable
5 and unwilling to provide at that time. After HomeRun's representatives returned to the United
6 States, they were informed that Twin Towers had not approved the contract. Twin Towers
7 thereafter refused to honor the contract, and began selling a whisk product similar in appearance
8 and function to the Miracle Whisk. Twin Towers also allegedly used HomeRun's proprietary
9 direct sales techniques to sell its whisk product. *Id.* at ¶¶ 31-41. HomeRun alleges claims for
10 breach of contract, misappropriation of trade secrets, fraudulent inducement, deceit, and
11 interference with prospective advantage. *Id.* at ¶¶ 42-102.

12 Twin Towers denies that the parties entered into a second agreement. It does not dispute
13 that HomeRun sent representatives to the United Kingdom to instruct its personnel, but asserts
14 that the instruction they provided was useless. Twin Towers also argues that HomeRun has
15 failed to identify its allegedly propriety sales techniques in response to Twin Towers' discovery
16 requests. It also argue that the HomeRun's "sales pitch" does not constitute a trade secret
17 because the sales pitch was presented to potential customers and other third persons.

18 HomeRun states that Twin Towers Trading, Ltd. was Twin Tower's United Kingdom
19 affiliate or subsidiary. Plaintiff's attorney Asa K. Burck states that during the investigation of
20 this case, he viewed a YouTube video in which a person believed to be Callum Regan, an
21 employee of Twin Towers Trading, Ltd., demonstrated the "Mr. Whipster" whisk product that
22 Twin Towers began selling after it repudiated the contract with HomeRun. When Mr. Burk later
23 attempted to view the same video, it was no longer available. Mr. Burck also visited the Twin
24 Towers Trading, Ltd. website which had a page dedicated to the sale of the Mr. Whipster whisk.
25 He noticed a similarity between the language used to market the Mr. Whipster product and that
26 used to market HomeRun's Miracle Whisk. When he later visited the website, the page for Mr.
27 Whipster was no longer available. As of January 16, 2019, the entire website for Twin Towers

Trading, Ltd., was no longer available. *Affidavit of Asa K. Burck* (ECF No. 74), at ¶¶ 3-8. HomeRun asserts that Michael Regan and Callum Regan, whom it believes were employees of Twin Towers Trading, Ltd. were present during HomeRun's training sessions in the United Kingdom.

HomeRun seeks to compel further responses to the following interrogatories:

Interrogatory No. 1: Identify each and every person having knowledge or information relating to the subject matter of this lawsuit. As to each person state:

- a. name;
- b. address;
- c. occupation;
- d. current employment;
- e. rank or status with current employer;
- f. identify the information this person has with respect to this matter.

Answer: TTT objects to Interrogatory #1 as overbroad and unduly burdensome. TTT cannot reasonably be expected to know and provide the requested information of such persons when the allegations of HomeRun's Complaints are HomeRun's allegations, not TTT's allegations, and when TTT denies the truthfulness of said allegations.

Subject to and without waiving said objections, TTT refers to its Rule 26 Disclosures in this matter and further identifies Jeff Brandon, Eric Scholer, Darren Patterson, Ashley Patterson and Chris Dodigovic. TTT's investigation into additional such individuals continues and it will supplement this answer upon discovery of the same.

Interrogatory No. 4: Identify all sales of manual pump whisks, whether Mr. Whipster or otherwise, sold by Twin Towers Trading, Inc., or its affiliates, subsidiaries, parent companies, agents, representatives, or related entities between January 1, 2015 and the present date. Include in your response the stores and territories in which these products were sold, the prices at which the whisks were sold, and the prices at which the whisks were purchased by Twin Towers.

Answer: TTT objects to Interrogatory #4 to the extent HomeRun seeks discovery of information related to products which are not the Mr. Whipster whisk (as mis-alleged in its Complaint as the Mr. Whisker wisk) because such information is wholly irrelevant to its causes of action and TTT's defenses. Interrogatory #4 is disproportionately overbroad and unduly burdensome to the needs of the case and the burden and expense of this proposed discovery far

1 outweighs any contrived benefit. Further, such information will not be
2 admissible or reasonably likely to lead to the discovery of admissible evidence.

3 TTT further objects to Interrogatory #4 to the extent it specifically requests
4 store, territory, pricing and purchasing information, all of which is
5 confidential, proprietary information which TTT will not disclose to
6 HomeRun, its competitor. TTT derives substantial economic value from this
7 information being its own and not being known to or readily ascertainable by its
8 competitors (including HomeRun) by proper means or by the public and TTT
9 expends substantial effort and resources to maintain the secrecy of this
10 information. If HomeRun does not withdraw this component of Interrogatory
11 #4, TTT will seek an order from the Court protecting it from having to disclose
12 this information to HomeRun.

13 Subject to and without waiving said objection, TTT states that it began selling
14 the Mr. Whipstir product in November 2015. TTT further refers to documents
15 produced herewith.

16 **Interrogatory No. 6:** Identify the manufacturers, distributors, suppliers,
17 brokers, and wholesalers, who have sold Mr. Whipstir or other manual
18 pump whisks, to Twin Towers Trading, Inc. and its affiliates, subsidiaries,
19 parent companies, agents, representatives or related entities, and the
20 amount and price of whisks purchased from each.

21 **ANSWER:** TTT objects to Interrogatory #6 as the information sought is
22 confidential, proprietary information which TTT will not disclose to
23 HomeRun its competitor. TTT derives substantial economic value from this
24 information being its own and not being known to or readily ascertainable
25 by its competitors (including HomeRun) by proper means or by the public
26 and TTT expends substantial effort and resources to maintain the secrecy
27 of this information. If HomeRun does not withdraw Interrogatory #6, TTT
28 will seek an order from the Court protecting it from having to disclose this
information to HomeRun.

TTT further objects to Interrogatory #6 to the extent HomeRun seeks
discovery of information related to manufacturers, distributors, suppliers,
brokers and wholesalers because such information is wholly irrelevant to its
causes of action and TTT's defenses. Interrogatory #6 is disproportionately
overbroad and unduly burdensome to the needs of the case and the burden
and expense of this proposed discovery far outweighs any contrived benefit.
Further, such information will not be admissible or reasonably likely to lead
to the discovery of admissible evidence.

Interrogatory No. 7: Describe Twin Towers Trading, Inc.'s sales methods
for manual pump whisks, whether the Mr. Whipstir or otherwise, from
2013 through present.

1 **ANSWER:** TTT objects to Interrogatory #7 as vague insofar as it does not
2 define the term "sales methods." TTT further objects to Interrogatory #7 as
3 unduly burdensome in time and scope back to 2013 when the allegations in
HomeRun's Complaint do not begin until late 2014 and to the extent it seeks
information relating to products which are not the Mr. Whipstir product.

4 Subject to and without waiving said objections, to the extent HomeRun
5 seeks to discover how TTT has sold the Mr. Whipstir product, TTT states
6 that it began selling the Mr. Whipstir product in or about November, 2015.
7 TTT has utilized in-store demonstration sales techniques which it has
utilized for many years pre-dating any relationship between HomeRun and
TTT. TTT formulated and authored its own scripts.

8 **Interrogatory No. 10:** Identify all entities related to, owned by, or affiliated
9 with Twin Towers Trading, Inc. that have sold manual pump whisks, whether
10 Mr. Whipstir or other, and include their relationship to Twin Towers Trading,
Inc.

11 **ANSWER:** TTT objects to Interrogatory #10 as overbroad to the extent
12 HomeRun seeks discovery of information related to products which are not the
13 Mr. Whipstir whisk alleged in its Complaint because such information is
14 wholly irrelevant to its causes of action and TTT's defenses. Interrogatory
15 #10 is disproportionately overbroad and unduly burdensome to the needs of
16 the case and the burden and expense of this proposed discovery far
outweighs any contrived benefit. Further, such information will not be
admissible or reasonably likely to lead to the discovery of admissible
evidence.

17 Further, to the extent HomeRun seeks information related to TTT's business
18 with regard to any product other than the Mr. Whipstir whisk, which is the
19 only product remotely at issue in this case, TTT objects to Interrogatory #10
20 as the information sought is confidential, proprietary information which TTT
21 will not disclose to HomeRun, its competitor. TTT derives substantial
22 economic value from this information being its own and not being known to
23 or readily ascertainable by its competitors (including HomeRun) by proper
means or by the public and TTT expends substantial effort and resources to
maintain the secrecy of this information. If HomeRun does not withdraw
Interrogatory #10, TTT will seek an order from the Court protecting it from
having to disclose this information to HomeRun.

24 Subject to and without waiving said objections, TTT states it is the only
25 entity involved in the sale of the Mr. Whipstir product. TTT further states
26 that the Mr. Whipstir product is the only manual pump whisk which TTT has
sold.

27 **Interrogatory No. 11:** Identify all scripts and sales pitches (including all
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1 recordings of these things) that Twin Towers Trading, Inc. and its affiliates,
2 subsidiaries, parent companies, agents, representatives and related entities,
3 used in the direct sale of any whisks from January 1, 2014 through present.
This includes identification of the dates and geographical location of usage.

4 **ANSWER:** TTT objects to Interrogatory #11 as its scripts and sales pitches
5 are confidential business information which TTT will not disclose to
6 HomeRun, its competitor, and is entitled to maintain the confidentiality of
this information. Further, HRP has no right to information regarding non-
HRP products sold by TTT.

7 TTT further objects to Interrogatory #11 to the extent it seeks scripts and
8 sales pitches related to products which are not the Miracle Whisk product
9 which have nothing to with HomeRun's allegations. None of this
10 information is admissible and the request to produce it is disproportionately
11 overbroad and unduly burdensome to the needs of the case and the burden
and expense of this request far outweighs any benefit. If HomeRun does not
withdraw Interrogatory #11, TTT will seek an Order from the Court
protecting it from having to disclose this information to HomeRun.

12 **Interrogatory No. 12:** Identify all scripts and sales pitches (including all
13 recordings of these things) that Twin Towers Trading, Inc. and its affiliates,
14 subsidiaries, parent companies, agents, representatives and related entities,
15 used in the direct sale of all other products from January 1, 2014 through
16 present. This includes identification of the dates and geographical location
of usage.

17 **ANSWER:** TTT objects to Interrogatory #12 on the same basis set forth in
18 response to Interrogatory #11 as its scripts and sales pitches are confidential
19 business information which TTT will not disclose to HomeRun, its
20 competitor. If HomeRun does not withdraw Interrogatory #11, TTT will
seek an Order from the Court protecting it from having to disclose this
information to HomeRun.

21 **Interrogatory No. 13:** Identify the dissemination of any part of the training
22 materials and information provided or produced by HRP in April-May 2015.
23 This includes any partial or complete reproduction of the materials or
information provided or learned from HRP, to anyone; identify the means of
dissemination, when, how and to whom.

24 **ANSWER:** TTT is unaware of any "training materials" or "information"
25 provided by HomeRun in April or May, 2015. TTT's investigation
26 continues and it will supplement this answer if any responsive documents
27 are identified.

1 HomeRun also requests that Twin Towers be ordered to produce “associated documents
2 requested in [its] Requests for Production,” but does not specifically identify those requests in its
3 motion. *See Motion to Compel* (ECF No. 72), at 2, 24.

4 HomeRun argues that Twin Towers should be required to respond to Interrogatory No. 1
5 by providing the requested information for Michael Regan and Callum Regan. Twin Towers
6 states that these two individuals are not currently employed by it or its affiliates. It has
7 apparently made no effort to determine whether it has responsive information regarding Michael
8 Regan and Callum Regan. HomeRun argues that Twin Towers should be required to answer the
9 other interrogatories which are relevant and proportional to its claims for breach of contract and
10 misappropriation of trade secrets, and to the determination of damages. Twin Towers’
11 opposition to the motion to compel is primarily based on the assertion that HomeRun’s claims
12 have no merit. Specifically, Twin Towers asserts that it did not enter into a second contract with
13 HomeRun in May 2015.

14 **DISCUSSION**

15 Rule 26(b)(1) of the Federal Rules of Civil Procedure provides that “[p]arties may obtain
16 discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and
17 proportional to the needs of the case, considering the importance of the issues at stake in the
18 action, the amount in controversy, the parties’ relative access to relevant information, the parties’
19 resources, and the importance of the discovery in resolving the issues, and whether the burden
20 and expense of the proposed discovery outweighs its likely benefit. Information within the scope
21 of discovery need not be admissible in evidence to be discoverable.”

22 As a general matter, the court does not grant or deny discovery based on a prediction of
23 whether the parties’ claims or defenses will succeed. Even where a defendant has filed a
24 potentially dispositive motion, the court will not stay discovery unless it is convinced that the
25 plaintiff cannot state a claim for relief. *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581
26 (D.Nev. 2013). Twin Towers has not filed a potentially dispositive motion. Nor has it
27 demonstrated that such a motion, if filed, would be granted. The strength or weakness of a
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1 particular claim or defense, however, may have some bearing on the determination of whether
2 the proposed discovery is proportional. The court should prohibit or limit overly burdensome
3 discovery relating to doubtful or tangential claims or defenses.

4 HomeRun's motion to compel is directed at obtaining information and documents
5 relating to Twin Towers' or its affiliates' sales of the Miracle Whisk product on which HomeRun
6 was entitled to commissions, and the sales of other whisk products after Twin Towers allegedly
7 breached the contract and misappropriated HomeRun's proprietary sales techniques.

8 Interrogatory No. 1 broadly requests the identity of each and every person having knowledge or
9 information relating to the subject matter of this lawsuit. The motion to compel, however, only
10 seeks information for Michael Regan and Callum Regan, who were employees of Twin Towers
11 Trading, Ltd. and were present during the training that HomeRun provided in May 2015. This
12 information is clearly relevant and proportional to the needs of the case. Plaintiff's motion to
13 compel a further response to Interrogatory No. 1 is granted as to these two individuals.

14 Interrogatory Nos. 4, 6, 7, 10, 11 and 12 seek information relating to Twin Towers' sales of the
15 Miracle Whisk product, and the purchase and sale of other manual pump whisk products by
16 Twin Towers or its related and affiliated entities. The information requested in these
17 interrogatories is relevant to HomeRun's claims and to the damages it allegedly sustained. These
18 interrogatories are also proportional to the needs of the case.

19 Interrogatory No. 13 asks Twin Towers to "[i]dentify the dissemination of any part of
20 the training materials and information provided or produced by HRP in April-May 2015."
21 HomeRun states this interrogatory is aimed at determining whether Twin Towers or others
22 have used its propriety sales techniques to sell other types of products. Twin Towers stated in
23 response to Interrogatory No. 13 that it "is unaware of any 'training materials' or
24 'information' provided by HomeRun in April or May, 2015." Twin Towers also argues that
25 HomeRun has failed to identify the trade secrets that Twin Towers allegedly
26 misappropriated.

1 HomeRun should identify with reasonable particularity the training materials and
2 other information that it refers to in Interrogatory No. 13. Although Twin Towers may, in
3 fact, know what training materials or information are referred to in the interrogatory, it will
4 be difficult for the Court to determine whether Defendant has sufficiently answered the
5 interrogatory unless the requested materials and information are clearly identified.
6 HomeRun can pursue a further response to Interrogatory 13 by providing Twin Towers with
7 a description of the training materials or other information provided during the training.
8 HomeRun's motion to compel a further answer to Interrogatory No. 13 is therefore denied
9 without prejudice.

10 Twin Towers also objected to Interrogatory Nos. 4, 10, 11 and 12 on the ground that
11 they seek its trade secrets or confidential, proprietary information. Twin Towers asserts that it
12 derives substantial economic value from this information not being known to or readily
13 ascertainable by its competitors or the public through proper means; and that it has expended
14 substantial effort and resources to maintain the secrecy of this information. It also threatened to
15 seek a protective order if HomeRun did not withdraw its requests for disclosure of Twin Towers'
16 trade secrets. HomeRun argues that Twin Towers did not sell whisky products until it
17 misappropriated HomeRun's proprietary sales techniques and used them to sell a competing and
18 inferior product. HomeRun argues that it needs the requested information to prove that Twin
19 Towers breached the contract and/or misappropriated its trade secrets and to establish the
20 damages it has sustained.

21 There is no absolute privilege for trade secrets and similar confidential or proprietary
22 information. *DirectTV, Inc. v. Trone*, 209 F.R.D. 455, 459 (C.D.Cal. 2002) (citing *Federal Open*
23 *Market Committee v. Merrill*, 443 U.S. 340, 362, 99 S.Ct. 2800, 2813 (1979); *Hartley Pen Co. v.*
24 *United States District Court*, 287 F.2d 324, 330 (9th Cir. 1961); and *Centurion Industries, Inc. v.*
25 *Warren Steurer & Assoc.*, 665 F.2d 323, 325 (10th Cir. 1981)). The court, quoting *In re*
26 *Remington Arms Company, Inc.*, 952, 1029, 1032 (8th Cir. 1991), further stated:

1 [T]he party opposing discovery must show that the information is a ‘trade
2 secret or other confidential research, development, or commercial information’
3 under [Rule 26\(c\)\(7\)](#) and that its disclosure would be harmful to the party’s
4 interest in the property. The burden then shifts to the party seeking discovery
5 to show that the information is relevant to the subject matter of the lawsuit and
6 is necessary to prepare the case for trial. [¶] If the party seeking discovery
7 shows both relevance and need, the court must weigh the injury that disclosure
8 might cause to the property against the moving party's need for the
9 information. If the party seeking discovery fails to show both the relevance of
10 the requested information and the need for the material in developing its case,
11 there is no reason for the discovery request to be granted, and the trade secrets
12 are not to be revealed.

13 209 F.R.D. at 459. *See also Gonzalez v. Google, Inc.*, 234 F.R.D. 674, 684-86 (N.D.Cal.
14 2006); *Nutraceutical, Inc. v. Syntech (SSPF) International, Inc.*, 242 F.R.D. 552, 554-55 (C.D.Cal.
15 2007); *Ch2E Nevada LLC v. Latif Mahjoob*, 2016 WL 7106391, at *1 (D.Nev. Dec. 5, 2016);
16 and *Scientific Games Corp. v. AGS LLC*, 2017 WL 3013251, at *3-4 (D.Nev. Jul. 13, 2017).

17 Where trade secrets are involved, the court will balance the risk of disclosure to
18 competitors against the risk that a protective order will impair the prosecution or defense of the
19 claims. *Nutraceutical*, 242 F.R.D. at 555 (citing *Brown Bag Software v. Symantec Corp.*, 960 F.2d
20 1465, 1470 (9th Cir. 1992)). The court may order that the trade secret or confidential
21 information not be revealed or be revealed only in a designated way. *Id.* (citing Fed.R.Civ.P.
22 26(c)(1)(G)).¹ This may include an order that the information be provided to the opposing
23 party’s outside counsel, but not to the opposing party itself. *Id.* (citing *Safe Flight Instrument*
24 *Corp. v. Sundstrand Data Control, Inc.*, 682 F.Supp. 20, 22 (D. Del. 1988)). *See also Lindsey v.*
25 *Elsevier Inc.*, 2016 WL 8731471, at *2 (S.D.Cal. Aug. 19, 2016); and *Russo v. Lopez*, 2011 WL
26 13250478, at *3-4 (D.Nev. Dec. 12, 2011).

27 The determination of whether corporate information, such as customer and pricing
28 information, is a trade secret is a question of fact. *Frantz v. Johnson*, 116 Nev. 455, 999 P.2d
351, 358 (2000) (citing *Woodward Insur., Inc. v. White*, 437 N.E.2d 59, 67 (Ind. 1982)). Factors
to be considered include (1) the extent to which the information is known outside of the business

¹ Formerly Rule 26(c)(7).

1 and the ease or difficulty with which the acquired information could be properly acquired by
2 others; (2) whether the information was confidential or secret; (3) the extent and manner in
3 which the person guarded the secrecy of the information; and (4) the alleged misappropriator's
4 knowledge of customers' buying habits and other customer data and whether this information is
5 known by competitors. *Id.* at 358-59.

6 *Frantz* involved the issue of whether the plaintiff had presented sufficient evidence at
7 trial to support his claim for misappropriation of trade secrets. Here, the issue involves an
8 objection to interrogatories on the grounds that they seek privileged trade secrets. Arguably,
9 Defendant's burden of showing that the requested information qualifies as a trade secret is lower
10 than that of a plaintiff who is attempting to establish liability for misappropriation. *Twin*
11 *Towers*, however, has done nothing more than cite the elements of the statutory definition of
12 trade secret to support its assertion that the requested information is a trade secret. *See* NRS
13 600A.030.6. It has not satisfied the first requirement of showing that the information is entitled
14 to protection as a trade secret. *HomeRun* has met its burden of showing that the requested
15 information is relevant to its claims and that it needs the information to prove liability and
16 damages. *Twin Towers'* objections based on the trade secret privilege are therefore overruled.

17 *HomeRun* requests an award of sanctions against *Twin Towers* as a result of its failure to
18 respond to the discovery requests. *Motion to Compel* (ECF No. 73) at 25. Fed.R.Civ.P.
19 37(a)(5)(C) provides that if a motion to compel is granted in part and denied in part, the court
20 may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.
21 *HomeRun's* motion to compel is granted except as to Interrogatory No. 13 and the requests for
22 production of documents not identified in the motion. The Court is not convinced that *Twin*
23 *Towers* cannot answer Interrogatory 13 without additional information. For the reasons stated
24 above, however, Plaintiff is required to describe the training materials and other information
25 referenced in Interrogatory No. 13. The Court will therefore award *HomeRun* its reasonable
26 expenses, including attorney's fees, incurred pursuing its motion to compel answers to
27 Interrogatory Nos. 1, 4, 6, 7, 10, 11 and 12. Accordingly,

IT IS HEREBY ORDERED Plaintiff's Motion to Compel Discovery (ECF No. 72) is **granted** with respect to its motion to compel Defendant to answers to Interrogatory Nos. 1, 4, 6, 7, 10, 11 and 12. Defendant shall serve answers to these interrogatories within fourteen (14) days of this Order, unless it files an objection. Plaintiff's motion is **denied**, without prejudice, as to Interrogatory No. 13, and in regard to the requests for production of documents not specifically identified in the motion to compel.

IT IS FURTHER ORDERED that Plaintiff is awarded its reasonable expenses, including attorney's fees, incurred in pursuing its motion to compel answers to Interrogatory Nos. 1, 4, 6, 7, 10, 11 and 12.

IT FURTHER ORDERED as follows:

1. Plaintiff's counsel shall, no later than fourteen (14) days from the entry of this order, up to and including **March 27, 2019**, serve and file a memorandum, supported by affidavit of counsel, establishing the amount of attorney's fees and costs incurred. The memorandum shall provide a reasonable itemization and description of work performed, identify the attorney(s) or staff member(s) performing the work, the customary fee of the attorney(s) or staff member(s) for such work, and the experience, reputation and ability of the attorney performing the work. The attorney's affidavit shall authenticate the information contained in the memorandum, provide a statement that the bill has been reviewed and edited, and a statement that the fees and costs charged are reasonable.

2. Defendant Twin Towers Trading shall have fourteen (14) days from service of the memorandum of costs and attorney's fees, up to and including **April 10, 2019**, in which to file a responsive memorandum addressing the reasonableness of the costs and fees sought, and any equitable considerations deemed appropriate for the court to consider in determining the amount of costs and fees which should be awarded.

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3. Plaintiff shall have seven (7) days from service of the responsive memorandum, up to and including **April 17, 2019**, in which to file a reply.

DATED this 13th day of March, 2019.

George Foley Jr.
GEORGE FOLEY, JR.
UNITED STATES MAGISTRATE JUDGE